

Senate Study Bill 1144

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON BEHN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act regulating the balance of competitive forces in swine and
2 beef production by enhancing the welfare of the farming
3 community and by preventing processors from gaining control of
4 beef or swine production, providing for the transfer of
5 provisions, making a penalty applicable, and providing for an
6 effective date.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 1 DIVISION I

1 2 REGULATION OF PROCESSORS

1 3 Section 1. Section 9H.1, Code 2003, is amended by adding
1 4 the following new subsection:

1 5 NEW SUBSECTION. 26A. "Person" means an individual,
1 6 business association, government or governmental subdivision
1 7 or agency, or any other legal entity.

1 8 Sec. 2. Section 9H.1, subsection 29, unnumbered paragraph
1 9 1, Code 2003, is amended to read as follows:

1 10 "Retailer" means a person who is engaged in the business of
1 11 selling pork products ~~in this state~~, if all of the following
1 12 apply:

1 13 Sec. 3. Section 9H.1, subsection 32, Code 2003, is amended
1 14 to read as follows:

1 15 32. "Swine producer" means a person who owns, controls, or
1 16 operates a swine operation ~~in this state~~ or who contracts for
1 17 the care and feeding of swine ~~in this state~~.

1 18 Sec. 4. Section 9H.2, unnumbered paragraph 1, Code 2003,
1 19 is amended to read as follows:

1 20 The purpose of this section is to preserve free and private
1 21 enterprise, prevent monopoly, and also to protect consumers ~~by~~
1 22 ~~regulating the balance of competitive forces in beef and swine~~
1 23 ~~production, by enhancing the welfare of the farming community,~~
1 24 ~~and also by preventing processors from gaining control of beef~~
1 25 ~~or swine production.~~

1 26 Sec. 5. Section 9H.2, subsection 1, paragraph b,
1 27 subparagraph (2), Code 2003, is amended to read as follows:

1 28 (2) Directly or indirectly contract for the care and
1 29 feeding of swine in this state. ~~However, this subparagraph~~

~~1 30 does not apply to a cooperative association organized under~~

~~1 31 chapter 497, 498, 499, or 501, if the cooperative association~~

~~1 32 contracts for the care and feeding of swine with a member of~~

~~1 33 the cooperative association who is actively engaged in~~

~~1 34 farming. This subparagraph does not apply to an association~~

~~1 35 organized as a cooperative in which another cooperative~~

~~2 1 association organized under chapter 497, 498, 499, or 501 is a~~

~~2 2 member, if the association contracts with a member which is a~~

~~2 3 cooperative association organized under chapter 497, 498, 499,~~

~~2 4 or 501, which contracts for the care and feeding of swine with~~

~~2 5 a member of the cooperative who is actively engaged in~~

~~2 6 farming.~~

2 7 Sec. 6. Section 9H.2A, Code 2003, is amended by adding the
2 8 following new subsection:

2 9 NEW SUBSECTION. 0A. A cooperative association which is a

2 10 party to a contract for the care and feeding of swine in

2 11 compliance with section 9H.2 prior to the effective date of

2 12 this Act, and which is in violation of section 9H.2, as

2 13 amended by this Act, shall have until June 30, 2005, to comply

2 14 with section 9H.2, as amended by this Act.

2 15 Notwithstanding any provision of this section, a

2 16 cooperative association shall not take an action on or after

2 17 the effective date of this Act that would be in violation of

2 18 section 9H.2, as amended by this Act.

2 19 Sec. 7. Section 9H.1, subsection 28, paragraph c, Code
2 20 2003, is amended to read as follows:
2 21 c. Not less than ~~twenty-five~~ ten percent of the swine
2 22 slaughtered by the processor each day are purchased through
2 23 cash or spot market purchases ~~from sellers of swine who do not~~
2 24 ~~hold a direct or indirect interest in the processor.~~
2 25 d. The processor makes cash or spot market purchases of
2 26 swine under the same terms and conditions from both sellers of
2 27 swine who hold a direct or indirect interest in the processor
2 28 and sellers of swine who do not hold a direct or indirect
2 29 interest in the processor. In making such cash or spot market
2 30 purchases of swine, the processor shall not provide sellers of
2 31 swine who hold a direct or indirect interest in the processor
2 32 with a preference over sellers of swine who do not hold a
2 33 direct or indirect interest in the processor.

2 34 DIVISION II
2 35 TRANSFER AND ELIMINATION OF CODE PROVISIONS FOR PURPOSES OF
3 1 ENHANCING READABILITY

3 2 Sec. 8. Section 9H.1, Code 2003, is amended by adding the
3 3 following new subsection:
3 4 NEW SUBSECTION. 22A. "Indirect" means to act or attempt
3 5 to accomplish an act through an interest in a business
3 6 association, through one or more affiliates or intermediaries,
3 7 or by any method other than a direct approach, including by
3 8 any circuitous or oblique method.

3 9 Sec. 9. NEW SECTION. 9H.3A PENALTIES == INJUNCTIVE
3 10 RELIEF.

3 11 The courts of this state may prevent and restrain
3 12 violations of this chapter through the issuance of an
3 13 injunction. The attorney general or a county attorney shall
3 14 institute suits on behalf of the state to prevent and restrain
3 15 violations of this chapter.

3 16 Sec. 10. Section 9H.14, Code 2003, is amended to read as
3 17 follows:

3 18 9H.14 DUTIES OF SECRETARY OF STATE.

3 19 The secretary of state shall notify the attorney general
3 20 when the secretary of state has reason to believe a violation
3 21 of this chapter has occurred. It is the intent of this
3 22 section that information shall be made available to members of
3 23 the general assembly and appropriate committees of the general
3 24 assembly in order to determine the extent of ~~farming~~
3 25 production operations being carried out in this state by
3 26 ~~corporations and other business entities contract feeders and~~
3 27 ~~processors and the effect of such farming practices upon the~~
3 28 economy of this state. The reports of corporations, limited
3 29 liability companies, limited partnerships, trusts,
3 30 contractors, and contract feeders and processors required in
3 31 this chapter shall be confidential reports except as to the
3 32 attorney general for review and appropriate action when
3 33 necessary. The secretary of state shall assist any committee
3 34 of the general assembly existing or established for the
3 35 purposes of studying the effects of this chapter and the
4 1 practices this chapter seeks to study and regulate.

4 2 Sec. 11. Section 10B.4A, unnumbered paragraph 1, code
4 3 2003, is amended to read as follows:

4 4 The secretary of state shall not prepare or distribute
4 5 forms for reports or file reports otherwise required pursuant
4 6 to section ~~9H.5A~~, 9I.87, or 501.103. A person required to file
4 7 a report pursuant to this chapter is not required to file a
4 8 report under those sections.

4 9 Sec. 12. Section 331.756, subsection 33, Code 2003, is
4 10 amended to read as follows:

4 11 33. Institute legal procedures on behalf of the state to
4 12 prevent violations of ~~the corporate or partnership farming~~
4 13 ~~laws as provided in section 9H.3 chapter 9H or 202B.~~

4 14 Sec. 13. DIRECTIONS TO CODE EDITOR.

4 15 1. The purpose of this section is only to enhance the
4 16 readability of provisions of the Code, and shall not be
4 17 construed as a measure intended to accomplish any substantive
4 18 change in the law or its statutory construction.

4 19 2. The Code editor is directed to transfer provisions in
4 20 chapter 9H to a new chapter 202B, consistent with the
4 21 authority of the Code editor pursuant to chapter 2B, as
4 22 follows:

4 23 a. For consolidation into the first subchapter of new
4 24 chapter 202B, the following shall apply:

4 25 (1) The following provisions shall be transferred:

4 26 (a) Section 9H.2, unnumbered paragraph 1, as amended by
4 27 this Act, which shall be codified as a new section.

4 28 (b) Section 9H.1, subsections 6, 8, 9, 10, 11, 12, 13, 22,
4 29 27, 28, and 31, which shall be codified as a new section.

4 30 Section 9H.1, subsection 26A, as enacted in this Act, shall be
4 31 codified in the same section. Section 9H.1, subsections 29
4 32 and 32, as amended by this Act, shall be codified in that same
4 33 section.

4 34 (2) The subsections of section 9H.1, as consolidated into
4 35 a new section, shall be preceded by an unnumbered paragraph 1,
5 1 stating the following: "As used in this chapter, unless the
5 2 context otherwise requires:".

5 3 b. For consolidation into the second subchapter of new
5 4 chapter 202B, the following provisions shall be transferred:

5 5 (1) Section 9H.2, subsections 1 through 3, as amended by
5 6 this Act.

5 7 (2) Section 9H.2A, as amended by this Act. Section 9H.2,
5 8 subsection 4, shall be transferred and codified as a new
5 9 subsection in section 9H.2A as transferred.

5 10 c. For consolidation into the third subchapter of new
5 11 chapter 202B, the following sections shall be transferred:
5 12 9H.5B, 9H.9, 9H.10, and 9H.15; and section 9H.14 as amended by
5 13 this Act.

5 14 d. For the consolidation into the fourth subchapter of new
5 15 chapter 202B, the following sections shall be transferred:
5 16 9H.3 and 9H.11.

5 17 3. The Code editor is directed to transfer section 9H.6 to
5 18 chapter 10B.

5 19 4. In consolidating and transferring provisions, the Code
5 20 editor shall not provide references in the law text of a
5 21 section of chapter 9H to new chapter 202B.

5 22 Sec. 14. Section 9H.5A, Code 2003, is repealed.

5 23 DIVISION III

5 24 MISCELLANEOUS PROVISIONS

5 25 Sec. 15. SEVERABILITY. If any provision of section 9H.2,
5 26 or the application of that section, to any person or
5 27 circumstance is held invalid, the invalidity does not affect
5 28 other provisions of section 9H.2 or any other provision in
5 29 chapter 9H or 202B as those provisions existed prior to the
5 30 effective date of this Act, which shall be given effect
5 31 without the invalid provision or application, and to this end,
5 32 the provisions of this Act are severable. This section shall
5 33 not affect the transfer of provisions of chapter 9H as
5 34 provided in this Act.

5 35 Sec. 16. EFFECTIVE DATE. This Act, being deemed to
6 1 immediate importance, takes effect upon enactment.

6 2 EXPLANATION

6 3 This bill amends provisions in Code chapter 9H (Iowa's
6 4 corporate farming law), which in part provides for the
6 5 regulation of beef and pork processors that exercise control
6 6 over cattle or swine operations.

6 7 BACKGROUND. During the 2002 Legislative Session, the
6 8 general assembly enacted Senate File 2309 (2002 Iowa Acts,
6 9 chapter 1095) which amended a number of Code provisions,
6 10 including Code section 9H.2. The stated purpose of that
6 11 section is to preserve free and private enterprise, prevent
6 12 monopoly, and protect consumers. The 2002 legislation
6 13 expanded the section's provisions which, with some exceptions,
6 14 has prohibited a processor from owning, controlling, or
6 15 operating cattle and swine operations since 1975, and has
6 16 prohibited a processor from contracting for the care and
6 17 feeding of swine since 1988. The legislation is currently
6 18 subject to constitutional litigation.

6 19 DIVISION I. The division provides a definition of "person"
6 20 which specifically includes business associations as defined
6 21 in Senate File 2309. In other respects the definition is
6 22 similar to the definition found in Code section 4.1, which
6 23 provides for general definitions of words used throughout the
6 24 Code.

6 25 The division amends a number of provisions created in
6 26 Senate File 2309 which refer to retailers and swine producers
6 27 engaged in business operations. The bill strikes references
6 28 to business being carried out "in this state". The bill
6 29 amends the purposes language of Code section 9H.2 by providing
6 30 for how regulation is to be accomplished (regulating the
6 31 balance of competitive forces in beef and swine production, by
6 32 enhancing the welfare of the farming community, and by
6 33 preventing processors from gaining control of beef or swine
6 34 production).

6 35 The division strikes a provision which allows cooperative
7 1 associations to directly and indirectly contract for the care
7 2 and feeding of swine in this state. The division provides
7 3 that a person who is a party to such a contract that is in
7 4 compliance with the law prior to the bill's effective date has
7 5 until June 30, 2005, to comply with the bill's provisions. A

7 6 processor who violates Code section 9H.2 is subject to a civil
7 7 penalty of not more than \$25,000. Each day a violation
7 8 continues is considered a separate offense.
7 9 The division amends a provision enacted in Senate File 2309
7 10 creating a definition of a qualified processor. Senate File
7 11 2309 provides a special exception for swine producers who hold
7 12 a threshold interest in a qualified processor, as long as the
7 13 swine producer's threshold interest is not more than 10
7 14 percent and the swine producer is not engaged in processing.
7 15 One requirement for a processor to be qualified is that not
7 16 less than 25 percent of the swine slaughtered by the processor
7 17 each day must be purchased through cash or spot market
7 18 purchases. The bill reduces the percentage of required cash
7 19 or spot market purchases to 10 percent. The bill provides
7 20 that cash or spot market purchases must be made, under the
7 21 same terms and conditions, from both sellers of swine who hold
7 22 a direct or indirect interest in the processor and sellers of
7 23 swine who do not hold a direct or indirect interest in the
7 24 processor. The bill provides that the qualified processor
7 25 cannot provide sellers of swine who hold a direct or indirect
7 26 interest in the processor with a preference over sellers of
7 27 swine who do not hold a direct or indirect interest in the
7 28 processor.
7 29 DIVISION II. The division directs the Code editor to
7 30 transfer provisions of the bill, along with other provisions
7 31 of Code chapter 9H, into a new Code chapter. As part of this
7 32 process the division creates new sections which repeat current
7 33 provisions providing for penalties and injunctive relief which
7 34 will be transferred to the new chapter.
7 35 The bill repeals Code section 9H.5A which has been replaced
8 1 by Code section 10B.4, enacted in 1998. Code section 9H.5A
8 2 has been suspended since that time.
8 3 DIVISION III. The division includes a severability clause
8 4 which is redundant to Code section 4.12.
8 5 The bill takes effect upon enactment.
8 6 LSB 2634XC 80
8 7 da/sh/8